



General Assembly

February Session, 2010

Raised Bill No. 119

LCO No. 697

* ____SB00119JUD__041310__ *

Referred to Committee on Environment

Introduced by:
(ENV)

***AN ACT CONCERNING REMEDIATION PROGRAMS OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-133e of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) Remedial action for sites on the inventory that is proceeding in
4 accordance with the provisions of state or federal programs shall
5 continue in accordance with such programs.

6 (b) The commissioner shall provide for remedial action for all
7 assessed sites by (1) referring the site to the United States
8 Environmental Protection Agency pursuant to the provisions of
9 CERCLA; (2) issuing administrative orders to responsible parties
10 pursuant to section 22a-6, 22a-428, 22a-432, 22a-433 or 22a-449; [.] or (3)
11 any action deemed necessary by said commissioner.

12 (c) If the commissioner determines that (1) the remedial action
13 schedule for a site proposed by the United States Environmental
14 Protection Agency pursuant to CERCLA is not consistent with the
15 schedule developed in the assessment for such site list, or (2) the site,

16 based on the site assessment score, is ineligible for CERCLA funding,
 17 [he] the commissioner may pursue remedial action for the site from
 18 any account established for such purpose and seek reimbursement for
 19 such remedial action.

20 (d) For any site undergoing remedial action pursuant to subdivision
 21 (1) of subsection (b) of this section or subsection (c) of this section, the
 22 commissioner may approve an alternative institutional control, other
 23 than an environmental land use restriction, as defined in section 22a-
 24 133n, as amended by this act, that the commissioner deems protective
 25 of human health and the environment.

26 Sec. 2. Subsection (a) of section 22a-133k of the general statutes is
 27 repealed and the following is substituted in lieu thereof (*Effective*
 28 *October 1, 2010*):

29 (a) The Commissioner of Environmental Protection shall adopt
 30 regulations, in accordance with the provisions of chapter 54, setting
 31 forth standards for the remediation of environmental pollution at
 32 hazardous waste disposal sites and other properties which have been
 33 subject to a spill, as defined in section 22a-452c, which regulations shall
 34 fully protect health, public welfare and the environment. In
 35 establishing such standards the commissioner shall (1) give preference
 36 to clean-up methods that are permanent, if feasible, (2) consider any
 37 factor he deems appropriate, including, but not limited to,
 38 groundwater classification of the site, and (3) provide for standards of
 39 remediation less stringent than those required for residential land use
 40 for polluted properties which (A) are located in areas classified as GB
 41 or GC under the standards adopted by the commissioner for
 42 classification of groundwater contamination, (B) were historically
 43 industrial or commercial property, and (C) are not subject to an order
 44 issued by the commissioner regarding such spill, consent order or
 45 stipulated judgment regarding such spill, provided an environmental
 46 use restriction [is executed] or a notice of activity and use limitation, as
 47 defined in section 22a-133n, as amended by this act, is in effect for any
 48 such property subsequent to the remedial action in accordance with

49 the provisions of [section 22a-133aa] sections 22a-133n to 22a-133s,
 50 inclusive, as amended by this act, and further provided such
 51 regulations specify the types of industrial or commercial land uses to
 52 which any such property may be put subsequent to such remedial
 53 action. Such regulations shall cite appropriate guidance documents
 54 which may be used by a licensed environmental professional in a
 55 voluntary site remediation under section 22a-133y.

56 Sec. 3. Section 22a-133n of the general statutes is repealed and the
 57 following is substituted in lieu thereof (*Effective October 1, 2010*):

58 For the purposes of sections 22a-133n to 22a-133r, inclusive, as
 59 amended by this act: (1) "Commissioner" means the Commissioner of
 60 Environmental Protection; (2) "person" shall have the same meaning as
 61 in section 22a-2; [and] (3) "environmental use restriction" means a
 62 limitation in any instrument executed and recorded as prescribed in
 63 section 22a-133o, the purpose of which is to minimize the risk of
 64 human exposure to pollutants and hazards to the environment by [(1)]
 65 (A) preventing the use of specified real property for certain purposes,
 66 or [(2)] (B) prohibiting certain activities on such property; and (4)
 67 "notice of activity and use limitation" means a notice concerning the
 68 use of real property that is recorded upon real property by a property
 69 owner pursuant to section 22a-133o, as amended by this act, the
 70 purpose of which is to minimize the risk of human exposure to
 71 pollutants and hazards to the environment by (A) preventing the use
 72 of specified real property for certain purposes, or (B) prohibiting
 73 certain activities on such property.

74 Sec. 4. Section 22a-133o of the general statutes is amended by
 75 adding subsection (f) as follows (*Effective October 1, 2010*):

76 (NEW) (f) (1) An owner of land may execute and record a notice of
 77 activity and use limitation under sections 22a-133n to 22a-133r,
 78 inclusive, as amended by this act, on the land records of the
 79 municipality in which such land is located if (A) the commissioner has
 80 adopted regulations for a notice of activity and use limitation pursuant

81 to section 22a-133q, as amended by this act, (B) the commissioner, or a
82 licensed environmental professional in the case of property for which
83 the commissioner authorized remedial action to be supervised by, or a
84 notice of activity and use limitation decision document to be prepared
85 by, a licensed environmental professional, determines, as evidenced by
86 the commissioner's or such person's signature on a notice of activity
87 and use limitation decision document, that it is consistent with the
88 purposes and requirements of sections 22a-133n to 22a-133r, inclusive,
89 as amended by this act, and any regulation adopted pursuant to said
90 sections and section 22a-133k, as amended by this act, and (C) such
91 notice will effectively protect public health and the environment from
92 the hazards of pollution.

93 (2) A notice of activity and use limitation may only be used and
94 recorded for releases in accordance with the regulations adopted
95 pursuant to sections 22a-133k and 22a-133q, as amended by this act, for
96 the following purposes:

97 (A) To achieve industrial or commercial direct exposure criteria,
98 groundwater volatilization criteria, and soil vapor criteria set forth in
99 regulations adopted pursuant to section 22a-133k, as amended by this
100 act, by preventing residential activity and use of the area to be affected
101 by the notice of activity and use limitation when the property is zoned
102 to exclude residential activity and use;

103 (B) To prevent disturbance of polluted soil that exceeds the
104 applicable direct exposure criteria but is inaccessible, in compliance
105 with the provisions of regulations adopted pursuant to section 22a-
106 133k, as amended by this act, provided pollutant concentrations in
107 such inaccessible soil do not exceed ten times the applicable direct
108 exposure criteria;

109 (C) To prevent disturbance of an engineered control to the extent
110 such engineered control is for the sole remedial purpose of eliminating
111 exposure to polluted soil that exceeds the direct exposure criteria,
112 provided pollutant concentrations in such soil do not exceed ten times

113 the applicable direct exposure criteria;

114 (D) To prevent demolition of a building or permanent structure that
115 renders polluted soil environmentally isolated, provided that either: (i)
116 The pollutant concentrations in the environmentally isolated soil do
117 not exceed ten times the applicable direct exposure criteria and the
118 applicable pollutant mobility criteria, or (ii) the total volume of soil
119 that is environmentally isolated is less than or equal to ten cubic yards;
120 or

121 (E) Any other purpose the commissioner may prescribe by
122 regulation.

123 (3) No owner shall record a notice of activity and use limitation on
124 the land records of the municipality in which such land is located
125 unless the owner provides written notice to each person holding an
126 interest in such land or any part thereof, including without limitation
127 each mortgagee, lessee, lienor and encumbrancer, not later than sixty
128 days prior to the recordation of such notice. Such notice of the
129 proposed notice of activity and use limitation shall be sent by certified
130 mail, return receipt requested, and shall include notice of the existence
131 and location of oil or hazardous material within such area and the
132 terms of such proposed activity and use limitation. Such sixty-day-
133 notice period may be waived upon the written agreement of all interest
134 holders.

135 (4) A notice of activity and use limitation recorded pursuant to this
136 subsection shall be implemented and adhered to by the owner and
137 holders of interests in the property and any person that has a license to
138 use such property or to conduct remediation on any portion of such
139 property.

140 (5) A notice of activity and use limitation shall be deemed
141 implemented and shall be in effect upon being duly recorded on the
142 land records of the municipality in which such property is located.

143 (6) (A) A notice of activity and use limitation shall be prepared on a

144 form as prescribed by the commissioner.

145 (B) A notice of activity and use limitation decision document, signed
146 by the commissioner or signed and sealed by a licensed environmental
147 professional, shall be referenced in and recorded with the notice of
148 activity and use limitation, and shall specify:

149 (i) Why the notice of activity and use limitation is appropriate to
150 achieve and maintain compliance with the regulations adopted
151 pursuant to section 22a-133k, as amended by this act;

152 (ii) Activities and uses that are inconsistent with maintaining
153 compliance with such regulations;

154 (iii) Activities and uses to be permitted;

155 (iv) Obligations and conditions necessary to meet the objectives of
156 the notice of activity and use limitation; and

157 (v) The nature and extent of pollution in the area that is the basis for
158 the notice of activity and use limitation, including a listing of
159 contaminants and concentrations for such contaminants, and the
160 horizontal and vertical extent of such contaminants.

161 (7) Upon transfer of any interest in or a right to use property, or a
162 portion of property, that is subject to a notice of activity and use
163 limitation, such notice shall be incorporated either in full or by
164 reference into all future deeds, easements, mortgages, leases, licenses,
165 occupancy agreements or any other instrument of transfer.

166 Sec. 5. Section 22a-133p of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective October 1, 2010*):

168 (a) The Attorney General, at the request of the commissioner, shall
169 institute a civil action in the superior court for the judicial district of
170 Hartford or for the judicial district wherein the subject land is located
171 for injunctive or other equitable relief to enforce an environmental use
172 restriction, a notice of activity and use limitation or to recover a civil

173 penalty pursuant to subsection (e) of this section.

174 (b) The commissioner may issue orders pursuant to sections 22a-6
175 and 22a-7 to enforce an environmental use restriction or a notice of
176 activity and use limitation.

177 (c) In any administrative or civil proceeding instituted by the
178 commissioner to enforce an environmental use restriction or a notice of
179 activity and use limitation, any other person may intervene as a matter
180 of right.

181 (d) In any civil or administrative action to enforce an environmental
182 use restriction or a notice of activity and use limitation, the owner of
183 the subject land, and any lessee thereof, shall be strictly liable for any
184 violation of such environmental use restriction or notice of activity and
185 use limitation and shall be jointly and severally liable for abating such
186 violation.

187 (e) Any owner of land with respect to which an environmental use
188 restriction or notice of activity and use limitation applies, and any
189 lessee of such land, who violates any provision of such environmental
190 use restriction or who fails to adhere to any notice of activity and use
191 limitation shall be assessed a civil penalty under section 22a-438. The
192 penalty provided in this subsection shall be in addition to any
193 injunctive or other equitable relief.

194 Sec. 6. Section 22a-133q of the general statutes is repealed and the
195 following is substituted in lieu thereof (*Effective October 1, 2010*):

196 The commissioner shall adopt regulations, in accordance with the
197 provisions of chapter 54, to carry out the purposes of sections 22a-133n
198 to 22a-133r, inclusive, as amended by this act. Such regulations may
199 include, but not be limited to, provisions regarding the form, contents,
200 financial surety, monitoring and reporting, filing procedure for, and
201 release from, environmental use restrictions and notices of activity and
202 use limitation.

203 Sec. 7. Section 22a-133r of the general statutes is repealed and the
204 following is substituted in lieu thereof (*Effective October 1, 2010*):

205 In the event that a court of competent jurisdiction finds for any
206 reason that an environmental use restriction or notice of activity and
207 use limitation is void or without effect for any reason, the owner of the
208 subject land, in accordance with a schedule prescribed by the
209 commissioner, shall promptly abate pollution thereon consistently
210 with standards adopted under section 22a-133k, as amended by this
211 act, for remediation of land used for residential or recreational
212 purposes.

213 Sec. 8. Subsection (b) of section 22a-133aa of the general statutes is
214 repealed and the following is substituted in lieu thereof (*Effective*
215 *October 1, 2010*):

216 (b) Any covenant entered into under this section shall release only
217 those claims [said] the commissioner may have which are related to
218 pollution or contamination on or emanating from the property, which
219 contamination resulted from a discharge, spillage, uncontrolled loss,
220 seepage or filtration on such property prior to the effective date of the
221 covenant. Such covenant shall provide that the commissioner will not
222 take any action against the holder of the covenant to require
223 remediation of the parcel or any other action against such holder
224 related to such discharge, spillage, uncontrolled loss, seepage or
225 filtration unless (1) prior to the commissioner's approval of a detailed
226 written plan for remediation pursuant to a brownfields investigation
227 plan and remediation schedule, the commissioner finds that there is
228 substantial noncompliance with such investigation plan and
229 remediation schedule and there has not been a good faith effort to
230 substantially comply therewith, (2) such property is not remediated in
231 accordance with the detailed written plan approved by the
232 commissioner and incorporated by reference in such covenant, (3)
233 prior to completion of remediation in accordance with such plan, the
234 commissioner finds that there is substantial noncompliance with any
235 such plan and there has not been a good faith effort to substantially

236 comply therewith, (4) remediation of the parcel in accordance with any
 237 detailed written plan for remediation did not comply with standards
 238 adopted by the commissioner pursuant to section 22a-133k, as
 239 amended by this act, which were in effect as of the effective date of
 240 either the covenant or the commissioner's approval of the detailed
 241 written plan for remediation, whichever is later, (5) if required by the
 242 standards adopted by the commissioner pursuant to section 22a-133k,
 243 as amended by this act, an environmental land use restriction or notice
 244 of activity and use limitation has not been recorded in accordance with
 245 section 22a-133o, as amended by this act, or there has been a failure to
 246 comply with the provisions of such a restriction, (6) for a property
 247 subject to the brownfield plan and remediation schedule, the
 248 commissioner does not approve a detailed written plan for
 249 remediation, or (7) the prospective buyer or owner fails to pay the fee,
 250 including fails to pay in accordance with any payment schedule
 251 pursuant to subsection (c) of this section.

252 Sec. 9. Subsection (d) of section 22a-133bb of the general statutes is
 253 repealed and the following is substituted in lieu thereof (*Effective*
 254 *October 1, 2010*):

255 (d) Any covenant entered into under this section shall release claims
 256 [said] the commissioner may have which are related to pollution or
 257 contamination on or emanating from the property, which
 258 contamination resulted from a discharge, spillage, uncontrolled loss,
 259 seepage or filtration on such property prior to the effective date of the
 260 covenant. Such covenant shall provide that the commissioner will not
 261 take any action to require remediation of the parcel or any other action
 262 related to such discharge, spillage, uncontrolled loss, seepage or
 263 filtration unless (1) such property is not remediated in accordance with
 264 the detailed written plan submitted to the commissioner and
 265 incorporated by reference in such covenant, (2) prior to completion of
 266 remediation in accordance with such plan, the commissioner finds that
 267 there is substantial noncompliance with such plan and there has not
 268 been a good faith effort to substantially comply therewith, (3)
 269 remediation of the property in accordance with such plan did not

270 comply with standards adopted by the commissioner pursuant to
 271 section 22a-133k, as amended by this act, which were in effect as of the
 272 date of the covenant, or (4) if required by the standards adopted by the
 273 commissioner pursuant to section 22a-133k, as amended by this act, an
 274 environmental use restriction or a notice of activity and use limitation
 275 has not been recorded in accordance with section 22a-133o, as
 276 amended of this act, or if the provisions of an environmental land use
 277 restriction or a notice of activity and use limitation were not complied
 278 with.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	22a-133e
Sec. 2	<i>October 1, 2010</i>	22a-133k(a)
Sec. 3	<i>October 1, 2010</i>	22a-133n
Sec. 4	<i>October 1, 2010</i>	22a-133o
Sec. 5	<i>October 1, 2010</i>	22a-133p
Sec. 6	<i>October 1, 2010</i>	22a-133q
Sec. 7	<i>October 1, 2010</i>	22a-133r
Sec. 8	<i>October 1, 2010</i>	22a-133aa(b)
Sec. 9	<i>October 1, 2010</i>	22a-133bb(d)

ENV *Joint Favorable*

JUD *Joint Favorable*